

This section is on the Disadvantaged Business Enterprise program and your role in monitoring the program for the Department.

The changes to the DBE section in the External Civil Rights manual this year were very minimal so this presentation will be covering areas that may need some improvement or special attention this year as well as non-manual topics that need to be addressed.

2

NEW DBE Program Administrator

- Amy Conklin – New DBE Program Admin.
 - Email: aconklin@nd.gov
 - Phone: 701-328-3116 (Denise's old number)
- Denise Spanjer – Retiring DBE Program Admin.
 - Still available until sometime in March
 - Denise's new number: 701-328-2651
- Sheila Kitzan – New CRD Admin. Assistant
 - Email: skitzan@nd.gov
 - Phone: 701-328-2637 or 701-328-2563



In September of 2016 I was asked to fill Denise's position as the DBE Program Administrator. The position will be double filled for training purposes until Denise departs in March. At this point it isn't certain when her last day will be but once she stops answering her phone you should probably take that as an indication she is no longer available.

My prior position as the Civil Rights Administrative Assistant was dissolved and some of those duties were transferred to Sheila Kitzan, the Construction Services Administrative Assistant and now also the CRD Administrative Assistant. My old phone number forwards to Sheila's. Since I've worked in Civil Rights over 7 years many of you have already interacted with me in one way or another so I expect it to be a smooth transition. Denise did an excellent job as DBE Program Administrator for the last 5 years and she will be surely missed!

3

DBE Overall Goal – 6.22%

RACE/GENDER CONSCIOUS

RGC – Percent greater than zero

NDDOT RGC goal – 2.75%

GFE on all replacements

Careful monitoring for any changes after time of award

Replacements require written approval

RACE/GENDER NEUTRAL

RGN – Zero percent

NDDOT RGN goal – 3.47%

No GFE monitored

Notify CRD when changes occur

At present we are at 3.79% overall.

This slide shows the Department's current overall DBE Goal and where we sit as of the last bid opening where all jobs were awarded. Presently we are at 3.79% overall, this does not include the December 16th bid opening participation that was brought in as those jobs have not all been awarded at the time of this training.

This year we will need to submit a new proposed goal to FHWA for the triannual period of 2018-2020. The overall goal is set using a number of different criteria and just because we have not met our goal in recent years doesn't necessarily mean the next triannual goal will be a lot lower.

The Department's Federal Funding can be contingent on us meeting our goal, which makes it even more important to make sure that participation on projects is correctly reported and any replacement requests follow the required process in place. When project oversight personnel do not report changes timely it can significantly impact our ability to meet our goal.

Goal Setting on Projects

- Review DBE Spec & Code Flags in RIMS Quarterly
- Maximum Goal on Projects is 12%
- Goal Setting Committee reestablished
- No RGC Goals on:
 - Projects less than 1M
 - Slurry Seal Coats
 - Chip Seal Coats
 - Microsurfacing Jobs
 - Pavement Marking
 - IT, WIMS, Lighting and Dynamic Sign Projects

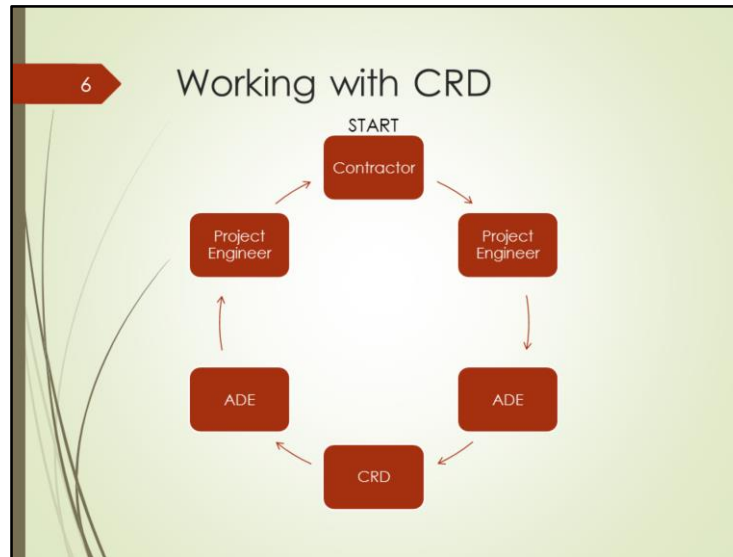
Due to the DBE Goal shortfall in 2016 the department has been required to assess and implement tools in order to meet our goal this year. Another way the Department has chosen to improve our process is to put in place Project Goal Setting Guidelines which are highlighted in this slide.

A Goal Setting Committee has also been reinstated which consists of representatives from Construction, Design & Local Government Divisions as well as a non-voting representative from the AGC in order to have a broader look on whether or not the goals are reasonably attainable.

100% State Funded Projects

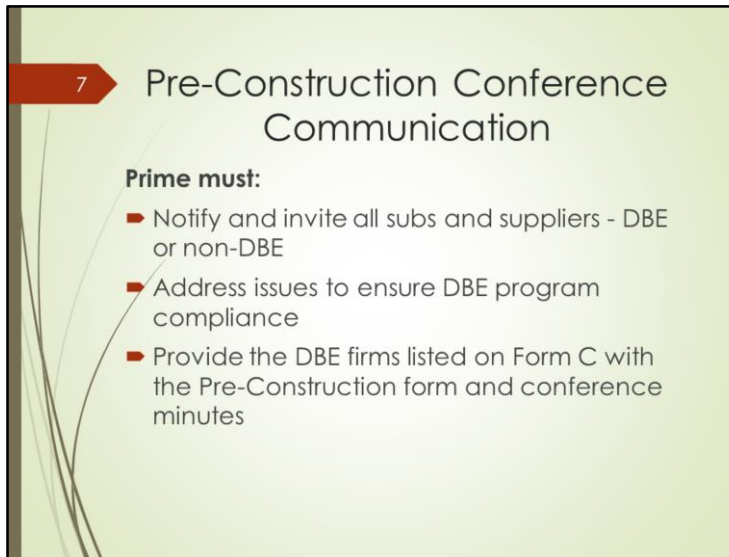
- This presentation DOES NOT APPLY
 - No Special Provisions apply
 - No USDOT or USDOL Federal Requirements
 - No Forms to be retrieved from Primes
 - No Reports need be submitted to Civil Rights

DBE Participation on State Funded only projects are not included in our DBE Goal. If someone is unsure if the project is state funded the easiest way pre-bid is to look at their proposal, if there is NO DBE Special Provisions then the project is 100% state funded. If a project has some state and some federal dollars it will contain a DBE SP, either RGC or RGN.



This graphic shows the proper communication channels to go through while working on projects. Contractors should use the Project Engineer as their first point of contact, the Project Engineer should notify their Assistant District Engineer if necessary and the Assistant District Engineer will then relay the information to Civil Rights if we need to be involved. The same chain in reverse will happen to relay information back to the contractor.

This process applies to most project work and questions, however, pre bid or minor questions from contractors will be answered by Civil Rights on a case by case basis. Using these communication channels makes sure that everyone that needs to know the information is properly informed and that issues that come up can be handled correctly with efficiency.



This information regarding the Pre-Con Conference is a refresher from last year.

The Prime is responsible for bringing together all parties that will work on the job. All tiers and types of subcontractors, both DBE and non-DBE, should be invited.

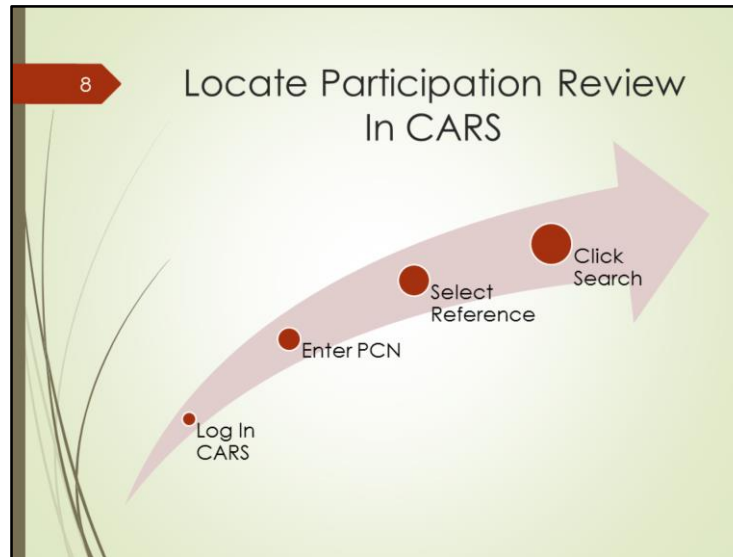
The Prime is also responsible for providing the DBE with the Pre-Construction form and minutes.

Pre-Construction Conference ensures that everyone knows their role in the project and when they will be performing it. The meeting goes over haul roads, traffic control, and every timing aspect of a project.

The conference discussion makes all parties aware of the federal requirements that pertain to the job. This is important because the prime is responsible for all parties' compliance with the DBE Special Provisions. The Department's contract is with the prime and the prime is responsible for the actions of all parties involved with the their contract.

When our new system is completely rolled out, the prime will be able to email the parties through the system. We will

be able to track payments to all subs & suppliers and assure a sufficient process for Prompt Pay. Currently we only have a select amount of contractors using the Civil Rights Certification & Compliance System but we are strongly suggesting all contractors to use it. The contractors that are using it have given positive reviews of it's functionality and easy of use.



This graphic shows how easy it is to locate the Participation Review Packet for any projects you are overseeing. The Participation Review Packet contains all the information the project was awarded with. This information is essential because it tells you what DBE's will be working and what type of work they will be doing. It also lists what work the Prime intends to self-perform. If you notice any discrepancies between what the Participation Review Packet states and what is actually happening on the project it needs to be reported to the ADE right away.

NDDOT employees using FileNet all you need to enter under the Civil Rights Engineering Comprehensive Search function is the PCN and Short Name 522.

I upload these to FileNet almost always within a day or two of the projects being awarded so you will have access to them when needed.

Locate DBE SP

- **Navigate to the DBE Program webpage:**
 - <https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>
 - Scroll to mid page and select the SP you need by publication date and print or save a copy.
 - Anyone can also access it on the Construction Bid Opportunities page where a link to the DBE Program page is also listed.

The DBE SP governing your project is in the project proposal. Have it available during your meeting for any questions that may come up.

Even though SPs are in the project proposal, have copies on your mobile device for reference throughout the construction season. As you learn new things, or have issues, as decisions are made, annotate your copy.

A new DBE SP will be included in the February Bid Opening proposals. Training on the new SP will be provided to contractors via webinar twice next week.

Most of the changes are pre-bid. In both the current and new SP's please understand that the GFE's process follows the contractor **throughout** the project if the goal is not achieved at the time of award. That means that the Prime should be actively seeking DBE's in any subcontractor work they are certified in in order to achieve their goal. If the DBE's quote is excessive or they cannot find any then they are required to go through the GFE process for approval of the Non-DBE sub prior to using them.

10

Required Forms

- [SFN 60597](#) - DBE Performance – CUF
 - Most current version dated 10/2016
- [SFN 60638](#) - Monthly Record of DBE Payments
 - Most current version dated 1/2015
- [SFN 14268](#) - DBE Participation Certification
 - Most current version dated 3/2015
- [SFN 60595](#) - Replacement Approval Request
 - Most current version dated 2/2015
- [SFN 60781](#) - DBE Weekly Trucking Report
 - Most current version dated 1/2015

■ Current versions dated correctly at time of this training, subject to change

This is a list of forms the prime and subs must be made aware of.

We will no longer accept old versions of forms, the most current versions need to be submitted. If we receive an old form it will be returned and the sender will have to resubmit it. If you receive an old version you should also notify the contractor to resubmit it using the current version. I have included the most recent revision dates for each form on this slide.

Project personnel and all tiers of contractors can access the most current version of the forms on the NDDOT website. It is strongly suggested that every time a form needs to be filled out it is accessed online, that way everyone will always be using the most current version. If paper copies are printed at the beginning of the construction season to use all spring and summer a newer version could be published that they are unaware of. Accessing it online and filling it out electronically also makes for a cleaner copy as well as eliminating the need to scan in paper copies because you can save them from your computer or mobile device.

12

[illegible]

SFN 60597 must be submitted for every DBE on every project at the same time as Request to Sublet -SFN 5682

The DBE Performance - Commercially Useful Function Certification form must be submitted to the project engineer at the same time as the Request to Sublet form.

The Request to Sublet form is very important in project management, please compare the DBE or non-DBE amounts listed on Form A and Form C in the participation review packet to determine whether the amounts match.

Do not approve the Request to Sublet without the completed CUF Certification form.

Contractors and DBEs requested this process change as a practical convenience. Therefore, this form is now an affidavit in which the contractor and the DBE are promising that the DBE is actually doing the work it is certified to perform and that the contractor is not using the DBE as a pass-through to circumvent the law.

You will need to wait until the DBE is performing the work to confirm that the DBE is IN FACT performing in the manner the contractor has professed to in the CUF Certification.

The Civil Rights Division has been receiving this form via paper directly to our office. Please do not do that! It needs to

be uploaded via CARS or FileNet, not sent to CRD. When we get copies sent to us directly we have to verify it has been uploaded and if it has not we have to contact the PE or Consulting Engineer to let them know we are sending it back to them to be uploaded electronically, which is an unproductive use of time for both parties involved. If you have uploaded the form like you are required to DO NOT SEND A PAPER COPY TO CRD AS WELL.

14

DBE Participation Certification - SFN14268

DBE PARTICIPATION CERTIFICATION
North Dakota Department of Transportation, Construction
SFN 14268 (Rev. 01-2014)

Complete this form for each disadvantaged business enterprise (DBE) for which a Form C (Notification of Intent to Use DBE) was submitted in accordance with the Disadvantaged Business Enterprise Program Special Provision. The DBE, intended amount, and bid item numbers must reflect what was entered on Form C. If additional DBE participation is realized during the course of the project, this form must be completed and submitted for **ONLY** those additional DBE firms that are certified by NDDOT. In those instances, "not intended" should be entered in the "Amount Intended" column.

This statement certifies that the DBE firm listed below performed on the project in accordance with the Disadvantaged Business Enterprise Program Special Provision. The following is a true and accurate statement of the monetary amount of the intended participation and the actual amount paid to the DBE.

| Prime Contractor | DBE Firm |
|------------------|-------------------------------|
| Project Number | Job Number / Bid Opening Date |
| Bid Item Numbers | Amount Paid \$ |
| | Amount Intended \$ |

REMARKS:
If the Amount Paid is less than the Amount Intended, use this space to document the reasons for the differing amount.

Prime submits SFN14268 to project engineer within 4 weeks of the DBE contract work being completed.

The DBE Participation Certification must be submitted to you within 4 weeks of the DBE's contract work completion.

Each certification must be signed by the prime contractor and DBE used on the project. Construction Division has received forms that were not signed by BOTH the Prime and DBE, which can be an issue later if there are any disputes and this form has to be referenced for clarification.

When you receive this information you need to check to see whether the Amount Intended and the Amount Paid differ. If the Amount Paid is \$500 or more different and no explanation is written in the Remarks section, return it to the prime for completion.

In 2016 we received a number of these forms where the DBE was paid substantially less than original intended at the time of award or retainage was unjustifiably withheld or the DBE wasn't used AT ALL for an unacceptable reason. We were not notified until the project was completed in most cases.

If this process isn't followed it effects our reporting to FHWA, which in turn puts our funding at risk.

Replacement Approval Request - SFN60595

REPLACEMENT APPROVAL REQUEST
 South Dakota Department of Transportation Civil Rights Division
 2010-2011 Form

STEP 1
 Instructions: Complete and submit immediately to Project Engineer when any change, replacement, substitution, or additional work is needed. No work may commence until a written replacement approval is provided by the Department. The Department will not make any replacement or substitute work unless approved prior to Civil Rights Division review approval of this request.

Project Information & Replacement

| | |
|-------------------------------|------------------------|
| Project Engineer | DBE/DFW Reporting Date |
| Project Location | Date |
| DBE Project Engineer included | Project Number |
| Other DBE's not included | |

Status of Individual Project Goal:
 Mark the status of the project and the status of the DBE participation goal.

| DBE Item | Original Contracted Amount | Amount Paid to Date | New Interest Amount | Participation % of Goal |
|----------|----------------------------|---------------------|---------------------|-------------------------|
| | | | | |
| | | | | |
| | | | | |

What was your firm's goal achievement percentage at the time of award?

If the replacement is approved, what will your firm's goal achievement be?

Describe your firm's efforts to hire DBE contractors.

Project Engineer Signature _____ Date _____

Project Engineer Signature _____ Date _____

Project engineers monitor contract work to ensure the DBE's listed on the DBE Participation Review perform the items of work specified at the time of award and that no improper substitutions occur.

- If there are any changes in project as it was awarded, a SFN60595 Replacement Approval Request must be submitted.

Next up is the Replacement Approval Request form and I cannot stress enough how important it is to use when necessary and in a timely manner! ANY changes on a project's DBE utilization or when a non-DBE is used in a Bid Differential from what is stated in the Participation Review Form at the time of award must be made through the Replacement Approval Request form process and approved by Civil Rights PRIOR to any of that specific work being done. Just because the trucks are due to start work on a job where a replacement approval request has been made does not mean that we are the ones responsible for delaying work. The prime needs to figure this out before it is an emergency. We do try to expedite approving these as we know it is usually time sensitive, but we cannot always guarantee it.

The CFR states there is no pay for work completed prior to our approval, which basically means if you are not following this process and have paid the non-DBE contractor for the work you are NOT following the rule, which is a huge no-no.

In the Good Faith Efforts process after award, the prime may seek to substitute different work for the contract value rather than to replace the exact same type of work. This means they may rearrange their self-performance work to solicit replacements in another spec and code item. This coming construction season both CRD and FHWA will be monitoring this process more closely to ensure it is being followed correctly. If a project is found to be insufficient in

going through the Replacement Approval Request requirements this construction season the likelihood of it being selected to be audited via a Contractor Compliance Review will increase substantially.

16

DBE Supportive
Services Consultant

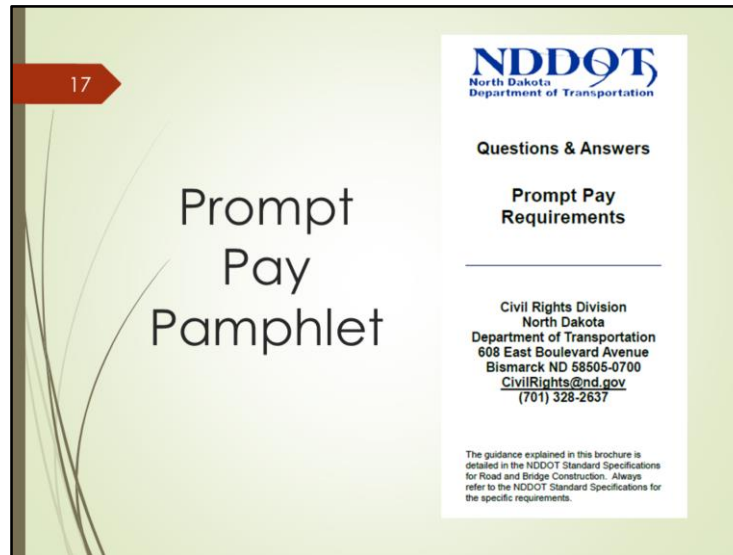
Duane Kuntz, OHITKA designs INC.

- dkdbe@midco.net
- 701-258-7515 (cell)
- 701-255-1380 (office)
- 3200 46th Ave. SE
- Mandan, ND 58554
- ohitikadesigns.com



Duane Kuntz is our very capable DBE Supportive Services Consultant. He may contact you requesting information or show up at a job site to preform the requirements of his contract with us. Mostly likely it will be in conjunction with the CUF reviews that he is performing as a representative of the Department, however, he may also be on the project or request information for other reasons as well.

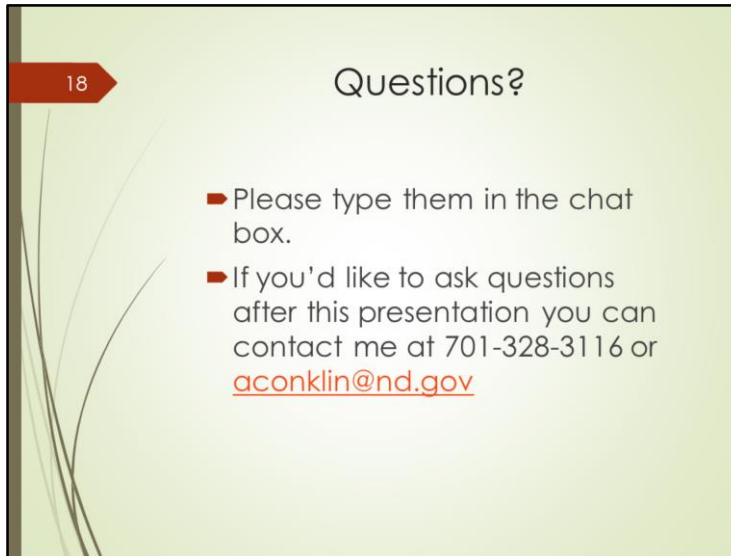
During the last construction season he mentioned to me several times that he felt unwelcome at job sites and also stated that this may be in regards to the protest activity. Regardless of any protest activity that may or may not be occurring I expect Duane to be treated with respect as any project personnel or person working on a NDDOT project should be. He has every right to file a complaint against a PE, Consulting Engineer and/or Contractor if he feels he is continually being mistreated. Be professional and prompt in assisting him with whatever he needs as his work is very time sensitive.



We have had a number of issues in 2016 where Civil Rights has received the DBE Participation Certification after the project has closed and it indicated that the DBE has not received the retainage for work that is completed. NDDOT Standard Specifications for Road and Bridge Construction requires Prime Contractors to pay all tiers of subcontractors whether they are DBE or non-DBE within 20 days of receiving NDDOT's progress payment.

If you know that the DBE's work is completed and the Prime is still withholding retainage you need to contact the Prime immediately to get that paid. If you are unsure if the DBE's work is completed you will need to contact the DBE to find out. Denise has generously created an excellent Prompt Pay pamphlet to clearly explain the requirements. This pamphlet has been distributed in our DBE Newsletter and is on the NDDOT CRD website for anyone to use.

Once the Civil Rights Compliance and Certification System use is mandatory for all contractors working NDDOT projects the DBE's will be required to confirm the amount the Prime has entered they were paid. This will very likely eliminate the Prompt Pay issues we seem to be constantly dealing with each year.



If you have any questions please type them in the chat box. If you'd like to discuss anything with me after this presentation my contact information is shown above.

As with all of the External Civil Rights Training PowerPoint presentations a copy of these slides with the notes as well as a recorded version of the entire ECR Training will be made available on our Civil Rights webpage in the near future for your reference or for any of your staff that were unable to attend.

Thank you for your time and I look forward to working with you this construction season.